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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Sixteenth periodic reports of States parties due in 2000

Addendum

POLAND*

[23 July 2001]

* This document contains the fifteenth and sixteenth periodic reports of Poland, submitted in one document, due on 4 January 1998 and 2000 respectively. For the thirteenth and fourteenth periodic reports of Poland, submitted in one document and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/299/Add.10 and CERD/C/SR.1222, 1223, 1235 and 1236.

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FIFTEENTH AND SIXTEENTH REPORTS ON THE IMPLEMENTATION BY POLAND OF THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION FOR THE PERIOD FROM AUGUST 1997 TO DECEMBER 1999

Introduction

1. Following the recommendations by the Committee on the Elimination of Racial Discrimination contained in the final remarks which were presented after the consideration of the previous report, this report updates the situation and presents both the legal status as well as the implementation by Poland of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination in the period from August 1997 to December 1999, taking into account the changes that took place in Polish legislation in relation to previous reports.

I. GENERAL

A. Constitution

2. On 2 April 1997 the Constitution of the Republic of Poland was adopted by the National Assembly. It was then approved in a national referendum, which took place on 25 May 1997, and signed by the President of the Republic. The new Constitution entered into force on 17 October 1997.

B. The provisions of the Convention and the constitutional principles

3. There is full conformity between the provisions of the Convention and the principles embodied in the Constitution of the Republic of Poland. The Constitution guarantees the rights provided for in the Convention.

4. The Constitution, in its article 5, imposes on the State (public authority) the obligation to ensure the freedoms and rights of persons and citizens, as well as the security of citizens.

5. This principle is also determined by a number of other provisions of the Constitution, in particular by article 2, which stipulates that the Republic of Poland is a democratic State ruled by law and implementing the principles of social justice. This provision gives rise, among other things, to the necessity to regulate the fundamental rights in the Constitution, to adopt an appropriate set of their institutional guarantees, to respect the internal morality of the law, its openness, non-contradictory character, and the prohibition of its retroactive force. Another principle related to the freedoms and rights of persons and citizens is the principle of the civic society (arts. 11-12), which should be construed as a declaration, i.e. the State's recognition of and guarantee for civil freedoms, as well as the possibility for the citizens to participate in the shaping of State policies, to influence in a creative and free way all manifestations of social life in all its forms, which are listed in the Constitution: political parties, trade unions, foundations and other voluntary associations of citizens.

6. As regards economic principles, very important provisions are included in articles 20-24. They remove the restrictions in disposing of property, with respect to both the State as well as private sector. Their basic tenet is the protection of private property, the right of succession and the freedom of economic activity. Any restrictions in those areas may only be of exceptional character - if justified by the public good and important public reasons, to be imposed exclusively by means of a statute. In article 24 the State assumes the obligation to protect work and exercise supervision over the conditions of its performance.

7. The principle of equality of rights for churches and religious organizations, impartiality of public authorities in matters of personal conviction, whether religious or philosophical, which is one of the fundamental guarantees and a prerequisite for the freedom of the human being, has been included in article 25 of the Constitution. The freedom of faith and religion has been embodied in its article 53. It stipulates, among other things, that parents have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions, that the religion of a Church or other legally recognized religious organization may be taught in schools, however, other people's freedom of religion and conscience may not be infringed. The freedom to publicly express religion may be limited only by statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others. Besides, in accordance with article 53, paragraphs 6 and 7, no one may be compelled to participate or not to participate in religious practices, or be obliged by organs of public authority to disclose his philosophy of life, religious convictions or belief.

8. From the point of view of the interests of national minorities, a very important provision has been included in article 35 of the Constitution. It ensures Polish citizens belonging to national and ethnic minorities the freedom to maintain and develop their own languages, to maintain customs and traditions of their own culture. They have the right to establish educational and cultural institutions to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

9. With regard to the Convention, one of the most important constitutional provisions has been included in article 32, which stipulates that all persons are equal before the law, all have the right to equal treatment by public authorities and no one may be discriminated in political, social or economic life for any reason whatsoever.

10. Any infringement of those and other rights of persons and citizens constitutes infringement of the Constitution and is regarded as an offence. Any interference with the sphere of freedom, whether by an act of the executive or legislative authority may only take place in the cases enumeratively listed in the Constitution, and only where this is necessary for the protection of security or public order, or for the protection of the natural environment, health or public morals, or the freedoms and rights of other persons (art. 31).

11. The new Constitution also includes provisions which ensure the protection of rights and freedoms.

12. According to article 79, paragraph 1, of the Constitution, everyone whose constitutional freedoms or rights have been infringed has the right to appeal to the Constitutional Tribunal for its judgement on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations as specified in the Constitution. However, the right to appeal may be asserted after all the available means of legal protection have already been exhausted, and specifically after the relevant court or administrative procedures have been gone through.

13. The Constitution, in its article 80, stipulates that everyone has the right to apply to the Commissioner for Citizen's Rights for assistance in protection of his freedoms or rights infringed by organs of public authority. It is because the Commissioner for Citizens' Rights safeguards the freedoms and rights of persons and citizens specified in the Constitution and other normative acts (art. 208). More information on the Commissioner for Citizens' Rights can be found in the remarks on article 2, point G.

C. Status of the Convention under domestic law

14. The new Constitution regulates in a comprehensive manner the question of the sources of law, and clearly specifies the status of international law - including the Convention - within the framework of the legal system. In accordance with article 87, paragraph 1, ratified international agreements constitute, inter alia, the sources of the universally binding law of the Republic of Poland. Pursuant to article 91, paragraph 1, a ratified international agreement - the Convention being one of them - after having been promulgated in the official *Journal of Laws* of the Republic of Poland, constitutes part of the domestic legal order and is applied directly, unless its application depends on the enactment of a statute. The Constitution determines also the question of precedence of legal acts. Within the constitutional legal order, international agreements are placed below the Constitution, with which they should comply. The effectiveness of international agreement in relation to other acts depends on the mode of ratification. International agreements which have been ratified by the President of the Republic upon prior consent granted by statute have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.

15. According to article 241 of the Constitution, international agreements previously ratified by Poland upon the basis of constitutional provisions valid at the time of their ratification and promulgated in the *Journal of Laws* of the Republic of Poland, are considered as agreements ratified with prior consent granted by statute, and are subject to the provisions of article 91 of the Constitution if it follows from the content of the relevant international agreement that it covers, inter alia, citizens' rights and obligations. The International Convention on the Elimination of All Forms of Racial Discrimination belongs to such a category of agreements, which means that it may be applied directly and that it has precedence over statutes.

D. Activities of Poland in the international arena in the area of human rights during the period covered by the report

16. By virtue of the resolution of the Council of Ministers of 28 September 1998, the Government of the Republic of Poland recognized the competence of the Committee on the Elimination of Racial Discrimination to receive complaints from persons or group of persons

subject to the jurisdiction of the Republic of Poland who claim that they are victims of the violation by Poland of any of the rights specified in the Convention (*Journal of Laws - Dz.U of 1999*, No. 61, item 660). The above declaration has been in force since 2 December 1998.

17. On 1 November 1998 Poland started to be bound by Protocol 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the transformation of the inspection mechanism established by the Convention, drawn up in Strasbourg on 11 May 1994 (*Dz.U. of 1998*, No. 147, item 962).

18. On 25 July 1997 the European Social Charter, drawn up in Turin on 18 October 1961, entered into force in respect of Poland.

19. By virtue of the Act of 30 April 1997 by the President of the Republic, the Republic of Poland withdrew its reservations concerning the exclusion of the obligatory jurisdiction of the International Court of Justice and the obligatory arbitration, which reservations were submitted by Poland at the ratification of or accession to some international agreements (*Dz.U. No. 32*, item 177). The act of withdrawing the reservations pertains, inter alia, to the International Convention for the liquidation of all forms of racial discrimination.

20. By virtue of the resolution by the Council of Ministers of 4 March 1999, the Government of the Republic of Poland granted consent for the ratification of the amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (the ratification procedure is currently under way).

21. The work on the act of law designed to establish the Commissioner for Children's Rights, undertaken in accordance with the Convention on the Rights of the Child as well as with article 72, paragraph 4, of the Constitution, is currently coming to an end.

22. Within the framework of the second round of the visits by the European Commission Against Racism and Intolerance (ECRI, a Council of Europe organ) in the period from 8 to 10 September, ECRI representatives paid a visit to Poland. The members of the ECRI delegation met with representatives of the Polish ministries and non-governmental organizations. At present ECRI is preparing a report on this visit.

E. Human rights

23. In Poland knowledge about human rights is being increasingly widely disseminated and propagated. Numerous monographs on this topic are available in bookshops and libraries, the judgements passed by the Commission and the Human Rights Tribunal are published in daily newspapers - "*Rzeczpospolita*" ("*The Republic*") and in the legal magazines - "*Państwo i Prawo*" ("*The State and the Law*"), "*Palestra*" ("*The Bar*"), and "*Prokuratura i Prawo*" ("*The Public Prosecutor and the Law*"). Furthermore, human rights are the subject of lectures at universities (Warsaw, Gdańsk, Lublin, Toruń, Poznań), at the Kraków Higher School of Pedagogy (WSP), apart from that also being taught at a series of training courses organized by the Ministry of Justice for judges and public prosecutors. Intense training is also provided by the community of Bar members as well as by the Association of Adjudicating Judges "*Iustitia*".

24. As regards education in the field of human rights and civil freedoms, an important role is played by the Helsinki Human Rights Foundation. It runs the postgraduate School of Human Rights, with a six-month-long curriculum. The students of this school include, among others, lawyers, police officers, prison service officers, university lecturers, teachers. Up to the present day, 640 persons have graduated from the school, the majority of whom are now engaged in various activities for the protection of human rights and freedoms. Besides, the Helsinki Human Rights Foundation also runs the School of Effective Public Skills, which conducts specialized training courses dealing with, among other things, the techniques of monitoring the observance of human rights.

25. The dissemination of knowledge about human rights is also furthered by the Commissioner for Citizens' Rights. At the beginning of 1998, in connection with the tenth anniversary of the functioning of his office, the Commissioner organized a scientific conference devoted, among other things, to the impact that the Constitution of the Republic of Poland has had upon the rights and freedoms of persons and citizens; a collection of scientific papers titled "*The Citizen - his Freedoms and Rights*" was also published on this occasion. Since February 1998, a monthly event, "Meeting at the Commissioner's" has been taking place, during which human rights are popularized in the form of discussions with the speakers.

26. Furthermore, in the period covered by the report (August 1997 to December 1999) numerous works were published with a view to promoting human rights and disseminating information on the institutions designed for their protection, including the Commissioner for Citizens' Rights, e.g. a systematized collection of the constitutional provisions came out under the title "Constitutional Freedoms and Rights of Persons and Citizens". Also, an information brochure for citizens which explains the principles and the procedure of submitting complaints to the European Tribunal of Human Rights in Strasbourg was updated (in connection with the entry into force, in November 1998, of Protocol 11 to the European Convention). This marked the beginning of a series of studies under the joint title, "*Read before you write a complaint*". So far, the papers titled "*Complaint to the Human Rights Committee in Geneva*" and "*Constitutional Complaint*" have been published.

27. In his activities aimed at disseminating knowledge about human rights on the occasion of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights, the Commissioner for Citizens' Rights published a brochure with the text of the Declaration, which is made available to people who come to the Commissioner's Office as well as to other interested persons; a wall calendar with the text of the Declaration is also made available, and has been sent out to, among other addressees, schools, health care institutions, penal institutions and military units.

28. It is not only knowledge about human rights that is being widely disseminated within the society; this also concerns reports on the implementation of international conventions on human rights. Each report, and then the recommendations of the Committees, are sent out to the interested departments and to non-governmental organizations, also transmitted in news items in the mass media.

29. On 10 December 1999, the celebrations of Human Rights Day included a series of conferences devoted to the implementation by the Government of the recommendations of the Human Rights Committee formulated after the consideration in 1999 of the fourth periodic report on the implementation by Poland of the International Covenant on Civil and Political Rights.

F. National minorities

30. National minorities constitute a small fraction of the Polish society - from approximately 2.2 per cent to 2.5 per cent of the whole population (according to the statistics of the Ministry of Internal Affairs and Administration). The most numerous are the following three minorities: German (300,000 to 350,000), Belarusian (200,000 to 230,000) and Ukrainian. Another group is composed of Lemkowie (some members of which consider themselves as belonging to the Ukrainian nation, while others maintain they constitute a nationality which is separate from the Ukrainians: 50,000 to 60,000, Lithuanian and Slovak, (about 20,000 each), Jewish (about 15,000), Russian (10,000 to 13,000). The remaining minorities number fewer than 10,000 people, and these are: Armenians about 8,000; Greeks and Macedonians, about 5,000; Czechs, about 2,000 to 3,000; Tartars, about 25,000; Karaims, about 150-200 people. The above statistics are approximate. It is because according to the act on the protection of personal data, as well as in compliance with the Constitution, it is not admissible to keep government registers including data on the ethnic origin of persons. Such data may only be collected by statute and on the basis of voluntary declarations of persons who consider themselves as members of a given national minority. The data on the number of people belonging to national minorities will be more precise after the national census, which is to be conducted in 2001; one of the questions in the personal questionnaire will relate to nationality.

31. The Constitution includes two provisions which are important from the point of view of the protection of national minorities. In article 35 it ensures Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. Apart from that, national and ethnic minorities have the right to establish their own educational and cultural institutions as well as institutions designed to protect religious identity; they also have the right to participate in the resolution of matters connected with their cultural identity. Article 27, in turn, stipulates that Polish is the official language in the Republic of Poland; however, "this provision shall not infringe upon national minority rights resulting from ratified international agreements".

32. Further, a bill on national minorities is being prepared in the Parliament (the *Sejm*) by the Commission for National and Ethnic Minorities (the procedure of first reading has already been completed, and currently further work is under way in the subcommittee composed of representatives of the following parliamentary commissions: national and ethnic minorities, administration, culture and education). One of the most important issues which the bill deals with is the enjoyment of language rights by the national minorities, and in particular the question of minority languages as supplementary languages in contacts with public administration organs. At present, the Polish language is the only official language in Poland, other languages being only admitted by virtue of the provisions of the Code of Administrative Procedure, Code of Civil Procedure and Code of Criminal Procedure.

33. At the same time, the *Sejm* is working on the ratification of the Council of Europe's Framework Convention on the protection of national minorities. It is expected that as early as the end of the second quarter of 2000 the *Sejm* will adopt an act of law authorizing the President of the Republic to ratify the Convention.

34. The Government's policy towards national minorities is being implemented, in accordance with the principle of the distribution of tasks within the Government, by the ministers whose representatives constitute the Inter-Departmental Team for National Minorities. However, matters related to national minorities which, by virtue of separate provisions, are not reserved for the competence of other organs - fall within the competence of the Minister of Internal Affairs and Administration, and are dealt with by the Department of Citizenship, National Minorities Division. The competence of this division covers, among other things, handling the matters of national minorities, and in particular:

- Drawing up, in consultation with representatives of other ministers, proposals concerning the guidelines of the State policy towards national minorities;

- Drawing up information reports concerning the problems of national minorities for the Sejm and the Senate of the Republic of Poland;

- Servicing the Inter-Departmental Team for National Minorities appointed by the President of the Council of Ministers on 20 June 1997, which is composed of representatives of the following departments: Internal Affairs and Administration, National Education, Justice, Foreign Affairs, Council for the Protection of Combat and Martyrdom Remembrance, and the Central Statistical Office;

- Cooperating with local government administration organs with a view to taking into account the local needs of national minorities;

- Maintaining day-to-day contacts with the management of social organizations of national minorities, and providing assistance, as far as possible, to those organizations in order for them to fulfil their statutory tasks;

- Examining complaints against the activities of State organs in respect of national minorities and, depending on the conclusions - taking appropriate measures; and

- Preparing and providing opinions on legal acts which deal with national minorities.

35. The tasks of the Inter-Departmental Team for National Minorities, in turn, include:

- Drawing up draft projects to lay ground for governmental activities aimed at the creation of favourable conditions for the national minorities that live in Poland;

- Elaborating solutions aimed at coordinating the activities taken by the organs of State administration which deal with national minorities;

- Providing assessments and formulating proposals as regards ensuring the execution of the rights and needs of national minorities;

- Formulating assessments and proposals with respect to the effectiveness of counteracting the phenomena which infringe the rights of national minorities, as well as initiating activities aimed at combating such phenomena;

- Initiating activities aimed at the popularization of the subject of national minorities and their culture within Polish society;

- Initiating research on the situation of national minorities;

- Considering other matters that have been assigned by the Council of Ministers or the President of the Council of Ministers, as well as those submitted by the relevant ministers in the course of executing their policies towards national minorities.

36. Matters related to national minorities are also dealt with by the Ministry of Culture and National Heritage. The scope of its activity covers, among other things:

- Supporting cultural events organized by unions and association of national minorities;

- Providing opinions, drawing up and filing materials concerning international standards in the protection of the cultural heritage of national minorities;

- Cooperating with the unions and associations of national minorities in matters involving cultural education of children and youngsters;

- Drawing up opinions on draft legal acts, conventions and international treaties concerning the problem of national minorities for the Ministry of Foreign Affairs;

- Cooperating with the Commission for National and Ethnic Minorities of the *Sejm* of the Republic of Poland in drawing up and executing its work plans, in the matters which are of considerable importance for the maintenance and development of minorities' culture; and

- Supporting measures aimed at promoting tolerance and furthering activities which popularize in the Polish society the issues concerning national and ethnic minorities.

37. The problem of national minorities with respect to education is dealt with by the Ministry of National Education. (More information on this issue can be found in the remarks on article 7, in paragraphs 101-106).

38. The National Council of Radio Broadcasting and Television is an important body undertaking activities aimed at the promotion of pluralism. It safeguards the freedom of expression, the right to information and the public interest in radio and television. Being a law-upholding organ, the National Council of Radio Broadcasting and Television, controls and evaluates the programmes aired by broadcasters from the point of view of fundamental and

socially accepted values. Pursuant to article 18 of the act on radio and television, the programmes cannot propagate activities which are contrary to public morals and public interest; they should, among other things, respect religious feelings of the listeners and viewers. A broadcaster who, in the assessment of the Council, has infringed the above provision is liable to a financial penalty in accordance with the principles specified in the act.

39. The programmes of public radio and television should take into account the needs of national minorities and ethnic groups. Pursuant to articles 48 and 50 of the act on radio and television, the National Council of Radio Broadcasting and Television assigns the revenues from TV and radio monthly fees to finance the activity of public radio and television units. Such revenues are earmarked, among other things, for the creation of programmes targeted at national minorities and ethnic groups. More information on the role of the media in disseminating information aimed at counteracting the racial prejudice which leads to racial discrimination can be found in the remarks on article 7.

40. While discussing matters related to the protection of national minorities in Poland, one should also mention the Act of 29 August 1997 on the protection of personal data. Its implementation has resulted in the withdrawal from official forms of the entry "nationality", whose presence - in the opinion of national minorities - might lead to racial prejudice, leading in turn to racial discrimination.

II. DETAILED INFORMATION ON THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLES 2-7 OF THE CONVENTION

Article 2

41. The Republic of Poland, in the fulfilment of the obligation resulting from article 2 of the Convention, has elevated the prohibition of racial discrimination to the level of a constitutional norm (article 32 of the Constitution). The Constitution is the supreme law of Poland (as provided for in article 8), it governs the whole legal system and the acts of a lower rank must comply with it. Therefore, any legal acts which would make a distinction between citizens with respect to their race, or in any other regard, are contrary to the Constitution, and may be appealed against to the Constitutional Tribunal, since - pursuant to article 188 - the Constitutional Tribunal has been empowered to adjudicate on the conformity of statutes with the supreme law, i.e. with the Constitution.

G. Commissioner for Citizens' Rights

42. The Commissioner for Citizens' Rights is an organ which protects civic rights and freedoms infringed upon as a result of improper decisions taken by an organ of public authority. The objective and subjective scope of its activity is specified by article 208 of the Constitution. In accordance with this article the commissioner safeguards the rights and freedoms of persons and citizens provided for in the Constitution (so-called fundamental rights covered in particular by chapter II, including equality before the law and prohibition to discriminate for any reason whatsoever).

43. The supreme law stipulates that everyone has the right to apply to the commissioner for assistance in the protection of his freedoms or rights infringed upon by organs of public authority (art. 80).

44. The subjective scope of the commissioner's competence covers both Polish citizens as well as foreigners, including stateless persons, if their rights and freedoms guaranteed by the Polish law have been violated by an act or omission on the part of organs of public authority. However, disputes arising from contractual relationships between natural persons extend beyond the scope of interest of the commissioner, since their resolution falls exclusively within the competence of the courts. The commissioner may interfere in these matters in one case only - if the court procedures have been infringed upon which results in the limitation of rights and freedoms of persons and citizens.

45. The Commissioner for Citizens' Rights, within the boundaries delineated by the Constitution and the Act on the Commissioner for Citizens' Rights of 1987, controls the activities of organs of public authority, intervening in cases where he ascertains that infringement of the law has taken place which results from the acts or "silence" of organs and institutions bound to respect and execute rights and freedoms of persons and citizens. The key criterion used by the commissioner as the basis for determining the measures to be taken is the legality of acts and decisions taken by the administration organs with respect to rights and freedoms of an individual.

46. The commissioner initiates his proceedings following a motion, i.e. a complaint submitted by a citizen whose rights have been violated or by an organization of citizens, or upon a motion on the part of local government organs. The commissioner may also take measures in a specific case upon his own initiative.

47. Within the period covered by the report, the commissioner received relatively few complaints related to discrimination on account of race, skin colour, national or ethnic origin (a dozen or so within a year).

H. The system of controlling the judgements and decisions made by State authority

48. In accordance with article 176 of the Constitution, court proceedings in Poland have at least two stages. This means that each decision rendered in the proceedings of first instance may be appealed against, and may be subject to verification by an organ of a higher level as a result of appeal. This is the so-called ordinary appeal procedure. Apart from that, there are also extraordinary appeal procedures, which allow for the control of final judgements in court proceedings (resumption of proceedings, cassation in criminal proceedings; in civil proceedings cassation constitutes an appeal measure of ordinary character).

49. There is also a possibility of appealing against administrative decisions, and referring them to the Chief Administrative Court as being unlawful - this is the so-called judicial control of the legality of administrative decisions. The essence of the judicial review consists in the fact that contentious matters between a citizen and an administrative organ which made a decision refusing the citizen a certain right or imposing on him a specific legal obligation are settled by an

organ which - within the organizational structure of the State - is situated outside the administration apparatus. It is independent in rendering decisions as well as able to objectively consider the case and pass judgement in compliance with the requirements of the rule of law.

50. Besides, within the framework of the reform of the territorial self-government, the Chief Administrative Court (NSA) also exercises control over the cases which fall within the scope of the supervision exercised by the state organs over municipal activity. Resolutions adopted by the organs of a municipality which create municipal regulations may be appealed; an appeal may be lodged in matters involving communalization of state property, and the NSA has been vested with the right to settle disputes regarding competence between the organs of self-government administration and the government administration. Therefore, at present each administrative decision which is not excluded *expressis verbis* by statute may be appealed to the administrative court as being unlawful. A decision of an organ of state administration may be appealed by everyone who has a legal interest in it - after the due course of procedure within the framework of administrative proceedings has been exhausted. When considering an appeal, the NSA is not bound by its limits, and in the event the appeal is granted, the NSA reverses the appealed decision in whole or in part, or declares the decision invalid or unlawful. The proceedings before the Chief Administrative Court have the character of a cassation - the court may not change the appealed decision by force of its judgement. However, the legal opinion expressed in the judgement is binding on the administrative organs in further proceedings, which determines the role of the judicial control to constitute a guarantee of the legality of administrative decisions.

I. The ban on organizations and political parties which invoke racial and national hatred in their programmes

51. The Constitution, in its article 13, introduces a ban on the existence of political parties and other organizations whose programmes are based upon totalitarian methods and Nazism, fascism and communism, as well as those whose programmes or activities assume or sanction racial or national hatred. Compliance of the goals and activities of political parties with the Constitution is safeguarded by the District Court in Warsaw, which registers political parties. In case of doubts as to the compliance with the Constitution of the goals and the principles of a political party as specified in the statutes or in the programme of the party, the court may apply to the Constitutional Tribunal for it to examine whether the party's political goals comply. In the event the Constitutional Tribunal ascertains non-compliance, the Court refuses to enter the party into the register.

52. As regards decisions on declaring illegal or prohibiting other organizations whose activities are aimed at racial discrimination, article 258 of the Penal Code applies:

> 1. Whoever participates in an organized group or association having for its purpose the commission of offences shall be subject to the penalty of deprivation of liberty for up to three years.

2. If the group or association specified in paragraph 1 has the characteristics of an armed organization, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between three months and five years.

3. Whoever sets up the group or association specified in paragraphs 1 or 2 or leads such a group or association shall be subject to the penalty of deprivation of liberty for a term of between six months and eight years.

J. The ban on racial discrimination in the light of Penal Code provisions

53. The ban on racial discrimination in any form is included both in the Constitution as well as in the Penal Code. The Penal Code of 1997 in its part titled "Offences against peace, mankind and war crimes" has introduced two articles concerning racial discrimination which were missing in the previous Penal Code of 1969. These are articles 118 and 119 of the Penal Code.

Article 118. 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

2. Whoever, with the intent specified under paragraph 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

Article 119. 1. Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years.

2. The same punishment shall be imposed on anyone, who incites commission of the offence specified under paragraph 1.

In the case of genocide, i.e. article 118, also preparation for such a crime is a punishable offence.

54. In addition, the Penal Code includes also other provisions which are aimed at fighting against racial discrimination. These are articles 256 and 257 of the Penal Code.

Article 256. Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to two years.

Article 257. Whoever publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to three years.

K. Integration movements and organizations of national minorities

55. According to the Act of 7 April 1989 (Law on Associations), since 1989 national minorities in Poland have been free to form associations. Since the new law entered into force, about 120 associations of national minorities have been registered. Such associations have been formed, among others, by the Belarusians, Romanies, French, Lithuanians, Lemkowie, Germans, Ukrainians and Jews (the list of associations is presented in the appendix).*

56. The cultural activity of associations of national minorities is supported by the Ministry of Culture and National Heritage, Department of National Minorities' Culture. The principal objective in supporting the national minorities is the maintenance of their national identity. Thanks to the ministry's subsidies, each national minority has at its disposal at least one periodical published in its mother tongue. In 1998 the number of subsidized titles amounted to 33, and in 1999 there were 34 such titles. The most important periodicals include: the Belarusian *Niwa*, the Ukrainian *Nasze Słowo*, the German *Schlesisches Wochenblatt*, the Slovak *Život*, the Lithuanian *Aušra*, the Romany *Rrom p -0 Drom*, the Jewish *Dos Jidishe Wort - Słowo Żydowskie*, as well as *Czasopis* published in the Polish language by the Belarusian minority and *Nad Buhom i Narwoju* – published by the Ukrainians from the Podlasie region (the list of periodicals published by national and ethnic associations is presented in the appendix).*

57. The Ministry of Culture and National Heritage also supports activities undertaken for the purpose of cultivating the tradition and culture of national minorities. Numerous festivals, competitions, literary meetings, presentations of artistic groups and reviews of artistic output of national minorities are being organized. One should also mention here, among other things, the following events: festivals organized by the Belarusian minority, "*Piosenka Białoruska*" ("*Belarusian Song*") and "*Białystok – Grodno*", the review of folk groups of the Slovak minority in Spisz and Orawa, the Festival of Ukrainian Culture, which takes place every two years, the Lithuanian Festival "*Sąskrydis*", the Jewish Culture Festival, the international meetings of gypsy groups "*Romane Dywesa*" in Gorzów Wielkopolski, the Festival of National Minorities in Gdańsk, organized jointly by several associations of national minorities, *Łemkowska Watra* in

* Documents in the appendix can be consulted in the archives of the secretariat.

Zdynia, the German reviews of choirs and orchestras, as well as the annual harvest home *Dozynki* festival on St. Ann Mountain. Such events are important, for they strengthen the identity of national minorities, as well as because they are an object of broad interest among Polish audiences.

58. In addition, in many regions (*voivodships*) various events are organized with a view to popularizing in the Polish society the culture and tradition of the national minorities. By way of example - the Jewish Theatre in Warsaw stages plays both in the Polish as well as in the Yiddish languages, the Cultural Centre in Warsaw organizes the Review of Artistic Output of National Minorities "*Wspólnota w Kulturze*" ("*Community in culture*"), the Regional Museum in Tarnów is the organizer of a series of meetings devoted to the Romany culture, in addition presenting the only permanent exhibition in the world of the Romany culture and history, and undertaking various activities related to the culture of the Jews.

59. The remarks included in the previous report concerning article 2 and article 3 of the Convention are still up to date.

Article 4

60. (See remarks on article 2, section I - the ban on the existence of organizations and political parties which include in their programmes references to racial and national hatred, as well as section J - the ban on discrimination in the Penal Code.)

L. Statistical data concerning violations of the ban on discrimination

61. Every year, as shown by statistical data, criminal proceedings are instituted in relation to the infringement of the provisions which stipulate the ban on discrimination (arts. 256 and 257). The majority of them are concluded with the discontinuance of proceedings, the reason most often being non-detection of the perpetrator of the offence in question. However, some cases have been concluded with an indictment. In 1997 13 indictments were brought to courts in connection with the violation of the provisions of articles 272, 273 and 274 of the Penal Code of 1969 (those provisions provide for the ban on discrimination) and four persons were convicted, the sentences passed varying from six months to more than one year of deprivation of liberty. In 1998, in turn, 25 indictments were brought to courts, including 10 for offences under articles 118, 119, 256 and 257 of the Penal Code, and 15 for offences under articles 272, 273 and 274 of the Penal Code of 1969 (until 1 September 1998 the old Penal Code was in force). There are no data available for 1999 yet. Against the background of the overall crime rate in the whole country, the cases involving racial discrimination constitute only a small fraction.

62. Examples of currently tried criminal cases related to the violation of provisions on non-discrimination:

- In Olsztyn, indictment was brought against two persons for acts from April 1992 to 1995, in Olsztyn and other places, consisting in acting jointly and in communication with other persons, in editing, publishing and circulating the periodical *Warmiak*, which publicly insulted certain groups of the population on account of their national, ethnic and racial origin. They propagated fascism and other totalitarian political

systems, in addition to inciting hatred because of national, ethnic and racial differences. From the beginning of the 1990s, the accused persons belonged to the group of so-called "skinheads", glorifying the white race and displaying hostility towards other nations;

- In Oświęcim, in turn, an indictment was brought against K.Ś. - protesting in defence of the papal crosses in the former gravel-pit (see below) - for his acts consisting in the fact that from April to August 1998, in Oświęcim, while acting jointly and in communication with other persons in execution of a previously adopted plan, publicly, through the drafting and disseminating of printed documents entitled *"Oświadczenie"* (*"Declaration"*) and *"Apel"* (*"Appeal"*) as well as *"Apel do Polek i Polaków"* (*"Appeal to the Polish people"*) and *"Polki i Polacy"* (*"To the Polish people"*), insulted Jews and Germans on account of their national origin and incited to hatred based on national and religious differences between Poles and Jews. On 12 January 2000 the sentence was given in this case: the defendant K.Ś. was found guilty of inciting nationally motivated conflicts, and was sentenced to the penalty of six months of deprivation of liberty, its execution being suspended for two years;

- On 20 April 1999 indictment was brought against M.D., who was charged under article 257 of the Penal Code, for the fact that in February 1999, in the hall of the railway station in Bydgoszcz he publicly insulted a Nigerian citizen by shouting at him the words, "Get out of Poland, you nigger; niggers to Africa, ..." etc. He demanded from the above-mentioned person a Nazi greeting, and moreover - while brandishing a knife and threatening to kill and use physical force - he forced the wronged person to leave the premises of the railway station;

- In Koszalin, pre-trial proceedings are currently under way against two persons who have been charged with having committed an act under article 256 of the Penal Code, consisting in the fact that, while acting jointly, they incited to hatred based on ethnic, racial and religious differences by sticking posters in a public place having nationalistic content and insulting groups of people on account of their national and racial origin. In the course of the proceedings it has been established that the suspects, together with other persons, formed the organization *"Związek Rodzimej Wiary"* (*"Native Faith Association"*). It had its own organizational structure and authorities, and propagated nationalistic and racist values;

- In Grudziądz, indictment was brought against two women charged with the fact that, by using words commonly deemed to be offensive, they insulted some Algerian children on account of their racial origin, an act under article 257 of the Penal Code;

- In Białystok, three persons were charged with taking part in a gathering while knowing that its participants were committing a violent assault on persons and their property and insulting a group of Romany people on account of their national origin by using offensive language. The District Court in Białystok ordered pre-trial detention of the suspects;

- In Opole, in 1999, a case was brought against a doctor of historical sciences of the University of Opole, who was charged with the so-called Auschwitz (Oświęcim) lie. An Auschwitz lie is the name adopted with respect to an offence which consists in denying Nazi crimes. Such denial is subject to prosecution by the administration of justice organs - as stipulated by the Act on the National Remembrance Institute, in its article 55. The defendant published the book entitled *Niebezpieczne tematy* (*"Dangerous Topics"*) in which he presented the opinions of the Holocaust revisionists, who deny that Zyklon B was used for killing Jews in the Nazi concentration camps. Some fragments of this book gave rise to protests voiced by the directors of the State Museum in Oświęcim, which in consequence led to the charge against the author that he had disseminated opinions in which he denied, publicly and contrary to the facts, Nazi crimes against the Jewish people, a violation of article 55 of the Act on the National Remembrance Institute. A suspended sentence was passed against the defendant due to the low degree of damage to society. In the statement of reasons for its judgement, the court emphasized that the taking of such decision was affected to a substantial degree by the attitude adopted by the defendant after the book had been published, as well as an insignificant number of copies which got to bookshops (five).

- In the years 1998-1999, in Oświęcim, the case involving the placement of crosses in the so-called "Oświęcim gravel pit" was under way. The dispute was stirred up by the disclosure of the plan to move to another place the so-called papal cross, which had been there since 1998, and instead to erect there a monument with a cross. Some international Jewish organizations demanded that the cross be removed from there, since the sight of it - being a sign of Christian Europe in the place where the Holocaust took place, was an insult to the memory of almost a million Jews killed there. In April 1998 the Social Committee for the Protection of the Cross was appointed, which - in protest against the removal of the papal cross - initiated the campaign of putting further crosses in the gravel pit. The protesters were led by K.Ś., who started occupying the gravel pit. The conflict connected with the campaign of putting crosses in the gravel pit was dealt with by the Standing Committee of the Episcopate, which proposed that the papal cross be left in the gravel pit and the remaining crosses be moved to another place. The position of the Committee was concordant with the Government proposal for solving the conflict. The Government also began to draw up an act of law whose aim was to protect all places and monuments of remembrance in Poland. Since 25 May 1999 the act on the protection of former Nazi concentration camps has been in force, which provides the possibility of solving the problem of the crosses in the Oświęcim gravel pit. The act introduces special rules for holding gatherings, conducting business and construction activity, as well as expropriation of real estate in the area of the former Nazi concentration camps. As regards K.Ś., a criminal proceeding was instituted against him, and in this respect he was charged with inciting to racially motivated conflicts, which has been referred to in item 2; also a criminal proceeding was instituted with respect to his possession of explosives which he threatened to blow up in one of his protest campaigns in the gravel pit;

- In Wrocław, at the railway station, a student from Senegal was beaten on racial grounds. Initially the police refused to file his complaint, however, after the intervention by the Helsinki Foundation, they filed the complaint, apologizing at the same time to the wronged person. The perpetrator of the beating was sentenced under article 257 of the Penal Code to one year of deprivation of liberty; and

- In Warsaw, a court case is under way as a result of an action for the protection of personal interests filed by the above-mentioned student from Senegal against the publishers of the magazine *Dobry Humor* ("*Good Humour*"). One of the issues of the magazine included a joke on Negroes.

63. Further, the Helsinki Foundation for Human Rights has recorded instances of discriminating against doctors who graduated from medical academies in Poland but are not Polish citizens. The act on the medical profession of 5 December 1996 requires that those doctors who have acquired the right of permanent residence in Poland (e.g. by virtue of marriage with a Polish citizen) should obtain a permission of the District Physicians' Chamber to practise their profession, as is the case with Polish citizens (arts. 5 and 7 of the Act). The District Physicians' Chambers, however, are free in granting permissions to practise the profession by doctors who do not hold Polish citizenship. Such discretion may create possibilities of discriminatory practices on the part of District Physicians' Chambers.

Article 5

64. Due to the fact that the final remarks of the Committee on the Elimination of Racial Discrimination suggest that the next report should include more information on the implementation by Poland of the provisions of article 5 (e), the commentary on article 5 will be limited to the presentation of the social, economic and cultural rights. As regards other provisions of article 5, the remarks included in the previous report are still up to date.

65. In the first place, it should be noted that in Poland the enjoyment of the rights specified in article 5 (e) of the Convention is on no account differentiated in relation to race, nationality or religion. The economic, social and cultural freedoms and rights specified in article 5 (e) have been guaranteed in the new Constitution, in its articles 64-76.

The right to work and free choice of employment

66. The Constitution in its article 56 guarantees to everyone the freedom to choose and pursue his occupation, as well as to choose his place of work, and exceptions in this regard may only be specified by statute. In its article 66, in turn, the Constitution guarantees to everyone the right to safe and hygienic conditions of work. Those provisions are specified in a more precise manner by the Labour Code, which stipulates, inter alia, that everyone has the right to work of his own choice (art. 10), that employees have equal rights arising from the fulfilment of the same obligations - this concerns in particular equal treatment of men and women with respect to their employment (art. 11), and that any discrimination in an employment relationship, especially on account of gender, age, fact of being handicapped, race, nationality, convictions, especially

political and religious, as well as trade union affiliation - is inadmissible (art. 11). Moreover, in accordance with article 15 of the Labour Code, the employer is obligated to provide the employees with safe and hygienic working conditions, which is being supervised and controlled by the State Labour Inspectorate.

67. The above specified provisions are the expression of the implementation of article 5 of the Convention, which provides for the right to work and free choice of employment. In order to strengthen the rights of the individual described therein, Poland ratified many conventions of the International Labour Organization, in particular Convention No. 122 on employment policy of 1964, Convention No. 29 on forced or obligatory labour of 1930 and Convention No. 105 on the abolition of forced labour of 1957.

68. As regards access to some types of employment, there is some diversification depending on citizenship. The act on foreigners of 25 June 1997 stipulates that a "foreigner, during his stay in the territory of the Republic of Poland, has the same rights and obligations as a Polish citizen, unless the provisions of this act or other acts of law stipulate otherwise". The limitations in access to employment by foreigners affect, among others, the following positions: public officials, Polish Postal Service (*Poczta Polska*) employees, as well as appointed teachers, however, pursuant to article 10, paragraph 5, of the act - Teacher's Charter (after the amendment of 18 February 2000), employment relationship may now be established with a European Union citizen who does not hold Polish citizenship. A foreigner who does not have the status of a refugee or a permanent residence card may be employed if the employer obtains permission from the county governor (*starosta*) whose territorial competence covers the office of the employer, and provided the foreigner has obtained the right to reside in the territory of the Republic of Poland as well as a permission for employment or for the performance of other paid work with the same employer (such permission is issued by the county governor - *starosta*).

69. In 1998, the total of 16,928 permits were issued to foreigners to be employed by Polish employers, and 3,831 permits were granted within the framework of services rendered by foreign companies for the Polish economic entities. The foreigners employed in 1998 came from 124 countries, the majority of them being Europeans, who obtained about 60 per cent of the overall number of the permits, followed by Asians - more than 32 per cent. Those proportions have not changed in any substantial way in the last few years.

N. The right to protection against unemployment

70. In accordance with article 65 of the Constitution "public authorities pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention". The tasks of the State in the area of labour market policy are carried out by the minister competent with respect to labour issues, with the assistance of the President of the National Labour Office, as well as by the provincial (*voivodship*) local government, provincial governor (*voivode*) and the district (*poviat*) local government, who cooperate with the organs, organizations and institutions which deal with the problems of employment and counteracting unemployment, in particular being in contact with the associations of trade unions, employers and the unemployed (in accordance with article 3 of the act of 14 December 1994 on employment and counteracting unemployment).

71. The basic form of combating unemployment is the employment exchange run by the district labour offices. It consists in providing assistance to the unemployed and other persons seeking work in obtaining appropriate jobs, and to employers in looking for appropriate employees. Such employment exchange is free of charge and is based on the principles of unrestricted availability of this service to all job seekers and employers, as well as its voluntary character and openness. The act on employment and combating unemployment guarantees universal access to job offers and related services. It also includes provisions concerning the equality of citizens (irrespective of their race, nationality, gender and religion) in using the services of employment exchange and occupational advice provided by the district labour offices (art. 12, para. 2 (3), and art. 17, para. 2 (3) of the Act). Persons who do not have Polish citizenship are subject to the restrictions specified above, and the foreigners who have the status of a refugee or a permanent residence card have the same right as Polish citizens.

72. The difficult situation in the labour market requires constant adaptation to its changing requirements. Various types of courses and training sessions are being organized in which women very often take active part, and after obtaining appropriate qualifications they undertake employment in accordance with their newly acquired skills.

73. At the end of 1994 unemployment fell for the first time. In the following years the decreasing trends were maintained, the sharpest fall occurring in 1997. In the first half of 1998 a further decrease in unemployment was reported, however its pace was slightly slower. The decreasing trends lasted until August 1998. From then until December 1998 the unemployment rate increased due to a decrease in the growth rate of the Polish economy as well as external crises - to reach the level of 10.4 per cent according to the data of 31 December 1998. During the year 1999 the unemployment rate was still on the rise, varying in the course of the whole year between 11 and 12 per cent. At the end of 1999 the unemployment rate was 13 per cent. One of the characteristic features of the Polish unemployment is its strong territorial differentiation, the highest unemployment rate occurring in northern and north-western Poland, the lowest in the provinces which include large urban areas.

O. The right to just and satisfactory working conditions

74. The Constitution of 1997 guarantees to both genders equal rights in all spheres of life, including the right to employment and remuneration according to the principle "equal pay for equal work", as well as the right to paid holidays and social security. Guarantees of equal rights for employees are also included in the provisions of the Labour Code (article 11 on equal treatment of men and women in the workplace). The amended provisions prohibit discrimination in the workplace on account of gender. If an employee considers that, despite the legal prohibition in force, he is discriminated against, he may apply to the Labour Court, which - if it ascertains that discrimination has in fact taken place - will order the employer to adhere to the principle of equal pay for equal work. The court may also order that compensation be paid by the employer in favour of the employee. In the case of discrimination, one may also apply to the trade unions and to the State Labour Inspectorate.

75. Article 66 of the Constitution of the Republic of Poland stipulates that everyone has the right to safe and hygienic conditions of work, the methods of implementing this right being specified by statute. The Constitution also stipulates that work is protected by the State, which exercises supervision over the conditions of work (art. 24), and besides, everyone has the right to have his health protected (art. 68).

76. The Labour Code specifies the obligations of the employer in the field of occupational safety and health, protection of work done by women and the principles of employing juveniles, which - together with the provisions regulating the activities of the organs which supervise and control the conditions of work (the State Labour Inspectorate and State Sanitary Inspectorate) - constitutes the framework for the labour protection system in Poland. The Penal Code stipulates criminal responsibility of the employer for a serious breach of regulations within the scope of health and job safety.

P. The right to form trade unions

77. The freedom of association has been guaranteed in the Constitution. Pursuant to its article 12, "The Republic of Poland ensures freedom for the creation and the functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations". The scope of freedom in creating trade unions, as well as other trade union freedoms may only be subject to such statutory limitations as are admissible by virtue of the international agreements binding on Poland.

78. Trade unions are independent of employers, state administration, local government organs and other organizations. The material guarantee of trade union freedom is the obligation imposed on the employer to make available to the company trade union organization the premises and technical facilities necessary for conducting its activity. The scope of such obligation is to be mutually agreed between the parties.

79. The law in force in Poland does not include any limitations on account of race, nationality or religion with respect to joining trade unions. The only existing limitations with respect to joining trade unions pertain to some groups of persons (civil servants). Such limitations consist in the possibility of joining only one trade union which is competent with respect to such persons' occupation. This concerns:

(a) Policemen, who may only join the police trade union - pursuant to article 67, paragraph 1, of the Act of 6 April 1990 on the Police (*Journal of Laws - Dz.U. No 30*, item 179, as amended);

(b) Prison Service officers, who have the right to join the Prison Service officers' union pursuant to article 14, paragraph 1, of the Act of 26 April 1996 on the Prison Service (*Dz.U. No 61*, item 283 as amended);

(c) The Supreme Chamber of Control (NIK) officials supervising or performing inspection activities, who may only belong to the trade union which groups exclusively the employees of the Supreme Chamber of Control; within the structure of NIK only one trade union

may function, which may be joined by its employees - pursuant to article 86, paragraph 2, of the Act of 23 December 1994 on the Supreme Chamber of Control (*Dz.U. of 1995, No.13*, item 59 as amended); and

(d) Border Guard officers may only join the trade union of Border Guard officers - pursuant to article 72 of the Act of 12 October 1990 on border guards (*Dz.U. No 78*, item 462 as amended).

80. The right to form and join trade unions is also vested in the members of the civil service corps. Only those civil servants who are employed on the basis of nomination do not have the right to perform trade union functions. There is, however, a prohibition to form and join trade unions for the following categories of persons:

(a) President of the Supreme Chamber of Control (NIK), its vice-presidents, directors-general and deputy directors of NIK organizational units, NIK President's advisers;

(b) Members of the National Council of Radio Broadcasting and Television;

(c) Judges of common courts of law and special courts, judges of the Constitutional Tribunal, the Commissioner for Citizens' Rights, President of the National Bank of Poland; and

(d) Professional soldiers, soldiers performing active service, Office of State Protection (UOP) officers.

81. Trade unions may not be formed by retired or unemployed people either, however, they have the right to join trade unions.

Q. The right to a home

82. Public authorities pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen - such is the stipulation of article 75 of the Constitution. The basic goals of the housing policy have been included in the document "State housing policy principles", which was adopted by the *Sejm* on 6 July 1995. Furthermore, in 1998, another document was drawn up - "Spatial development, real property, housing industry - medium-term sector strategy", which was adopted by the Economic Committee of the Council of Ministers on 29 June 1998. Another document, in turn, "State housing policy principles for the years 1999-2003", adopted by the Council of Ministers on 13 July 1999, includes a set of proposals for legal solutions, which are the manifestation of the government policy of supporting housing construction in the next stage of the reform. The three most important priorities of State housing policy are the following:

(a) Creating conditions for an increase in the supply of homes and lowering the cost of their construction;

(b) Rationalizing the level of rents, as well as improvement and more effective use of the existing housing resources, including the liquidation of formal barriers to the exchange of homes; and

(c) Increasing the number of homes for the rental sector.

83. The task of satisfying the housing needs of the self-government community members is to be carried out by the municipality (*gmina*) itself. The Act of 2 July 1994 on the rental of homes and housing benefits empowers municipalities to adopt resolutions specifying the principles of the housing resources management and the criteria for choosing persons with whom agreements should be concluded in the first place. In this respect protection is provided to families with low incomes, and it is to those families that the homes at the disposal of the municipality should be allocated. Other provisions which protect the weakest groups of the society are those that guarantee that evictions will not be performed in the so-called protective period, from 1 November to 31 March. Another instrument of protective character is the right to obtain a social home. Such right may be granted by both the municipality as well as the court, which may rule the right to such a home in the judgement ordering eviction - in favour of a person who is in a difficult financial and family situation.

84. Pursuant to the Act of 26 October 1995 on supporting housing construction, a legal framework has been created and conditions have been specified with a view to supporting the construction of low-rent homes for hire and cooperative tenancy homes by the State. The National Housing Fund has also been created, its task being - among other things - to grant loans on preferential terms to social construction associations for their investment and construction enterprises, i.e. for the construction, rebuilding, development, superstructure, reconstruction, modernization and adaptation of buildings in which the homes will be rented or allocated to natural persons according to the cooperative tenancy right to a home. The Fund is financed to substantial part from the central budget. Until the end of 1999, more than 6,400 homes built with the assistance of a loan from the National Housing Fund were put to use.

R. The right to health care, social security and social benefits

85. According to article 67 of the Constitution "a citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age". Further a citizen who is involuntarily without work and has no other means of support has the right to social security. The scope of social security is specified by statute.

86. Article 68 of the Constitution stipulates, in turn, the following:

1. Everyone shall have the right to have his health protected;

2. Equal access to health-care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective to their material situation. The conditions for, and the scope of, the provision of services shall be established by statute;

3. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age (...).

87. As of 1 January 1999, the Act of 6 February 1997 on universal health insurance entered into force. It introduced obligatory universal health insurance, which is realized by the health insurance institutions called the "Kasa Chorych" health funds system. Benefits from the "Kasa Chorych" health funds system are provided to the insured persons. An insured person in the meaning of the above-mentioned act is a person who has Polish citizenship and resides in the territory of the Republic of Poland. It also covers a foreigner residing in Poland on the basis of a permanent residence card or a temporary residence card issued to him on account of his being granted the status of a refugee, provided he is covered by the health insurance, or has insured himself on a voluntary basis, or is a family member of the persons referred to above. The health funds system may not insure citizens of foreign countries who are residing in Poland on a basis other than a permanent or temporary residence card issued on account of granting them the status of a refugee, or persons employed in foreign diplomatic representations, consular offices, special missions, or international institutions, unless international agreements ratified by the Republic of Poland stipulate otherwise.

88. An amendment to the act on universal health insurance is planned, by which the rights of some groups of foreigners (e.g. those having the temporary right of residence in Poland) will be expanded to provide them coverage, either on an obligatory or a voluntary basis, by the universal health insurance.

89. As of 1 January 1999 the legal framework for insurance covering old age and disability pensioners has changed, since a new act on the system of social security entered into force on this date. The system of social insurance is of universal character (i.e., all social and occupational groups are covered by it). It covers all employees, irrespective of whether they work on a full-time or a part-time basis. The retirement and disability insurance covers, on a compulsory basis, natural persons who, in the territory of the Republic of Poland:

(a) Are employees;

(b) Perform home work;

(c) Are members of agricultural production cooperatives and cooperative farmers' associations (SKRs);

(d) Provide work on the basis of a contract of agency or a contract of mandate;

(e) Conduct non-agricultural business activity, as well as persons who cooperate with them, or persons who fall in the category of the other groups specified in the act.

90. The health insurance system (which provides financial benefits in case of illness or maternity) covers, on a compulsory basis, the following groups of persons:

(a) Employees;

(b) Members of agricultural production cooperatives and SKRs;

(c) Persons performing substitute forms of military service; and

(d) Other persons who are compulsorily covered by the retirement and disability insurance may join the health insurance system voluntarily, upon their own request.

91. Insurance against accidents is compulsory with respect to persons covered by the retirement and disability insurance. The act does not make a distinction with regard to the insured person's citizenship.

S. The right to education and occupational training

92. The Constitution, in its article 70, guarantees everyone the right to education - "education in public schools shall be without payment" and public authorities ensure universal and equal access to education for citizens. To this end they establish and support systems designed for providing individual financial and organizational assistance to pupils and students.

93. The question of admitting to school children who are not Polish citizens is governed by the regulation of the Minister of National Education of 8 September 1993 on the conditions and the mode of admitting to public schools and educational institutions persons who are not Polish citizens, and on the principles of payment by such persons for education and care in public schools and educational institutions. In connection with the entry into force of the reform of the educational system in Poland, an amendment to the regulation mentioned above is expected to be introduced in the near future - to take into account free education in the primary and grammar schools for children who are not Polish citizens.

94. Information on safeguarding the rights of national minorities in the field of education has been included in the remarks on article 7 of the Convention.

T. The right to equal participation in cultural activity

95. The right to take part in the cultural life is provided for in the first place by the Constitution, but also by the Act of 25 October 1991 on organizing and conducting cultural activity which stipulates that "the State exercises patronage over cultural activity by supporting and promoting creative activity, education and cultural instruction, cultural activities and initiatives, as well as by protecting cultural heritage". The promotion of cultural identity is one of the goals of the activities undertaken by the Ministry of Culture and National Heritage, and is implemented by its Department of National Minorities Culture.

96. The policies of the Republic of Poland in the field of promotion of cultural identity are generally aimed at the avoidance of two negative phenomena: on the one hand, assimilation and absorption of the minorities' culture into the culture of the Polish majority, and on the other hand, cultural isolation of the national minorities. The objective sought is to reach civic integration, maintaining at the same time the right to preserve the national identity. The law in Poland is aimed at making people feel equal in terms of their civic rights, at the same time making them feel not being forced to be similar in cultural terms. The national minorities in Poland are guaranteed all fundamental cultural rights: the right to their own culture, education, language, names (Act of 15 November 1956 on the change of first names and surnames allows for the use of a name in a foreign form). More details on this issue can be found in article 2 - integration movements and organizations among national minorities.

Article 6

97. As has been mentioned above, anyone whose rights have been violated, for example, as a result of discrimination, may file a constitutional complaint with the Constitutional Tribunal, or submit a request to the Commissioner for Citizens' Rights (see remarks on part I).

98. Within the framework of Polish law there are several ways of seeking compensation or redress for damage done. The protection of personal interests, in particular health, freedom, dignity, freedom of conscience and other freedoms is stipulated by the Civil Code in articles 23-24: "A person whose personal interests are threatened by another person's activity may demand the cessation of that activity ..., he may demand that the person who committed the infringement perform acts necessary to remove its effects ..., he may also demand financial redress or the payment of an appropriate amount of money for the designated public purpose. If as a result of an infringement a material damage has occurred, the injured person may demand that it be redressed in accordance with general principles".

99. Compensation for an infringement of a law may also be sought pursuant to the provisions on torts. In accordance with article 415 of the Civil Code, everyone has the right to demand that damage done by another person's fault be redressed. In some cases, the code stipulates a special form of redress - in the form of a disability pension. This concerns, among other things, the case of a total or partial loss of fitness for paid work. The Civil Code also allows in some circumstances for a financial compensation for an injury suffered; this is the case with causing bodily injury, disturbance of health, or depriving a person of freedom.

100. Seeking compensation is also possible within the framework of criminal proceedings. The injured person may pursue his property claims which result directly from the commission of an offence by filing a civil suit against the defendant (a so-called adhesion claim).

Article 7

U. Education and teaching

101. The Polish educational system is governed by the Act of 7 September 1991 on the educational system. It is based on the principle of equal rights. Since 1 September 1999 the reform of the educational system has been in force. It has introduced six-year primary schools, in which education is universal, free of charge and compulsory. The education in primary schools is then continued in three-year comprehensive schools. After a comprehensive school (i.e. after the total of nine years of education) one may learn in a three-year general education secondary school and take the matriculation (*matura*) examination (and then study at a school of higher education), or continue education in vocational schools of different types.

102. Apart from free public schools, there are also paid non-public schools in Poland. It is the parents who take the decision which school their child will attend. Admitting a child to a given school is never dependent on their national or ethnic origin, race or religion.

V. Education of children belonging to national minorities

103. The Constitution guarantees to national and ethnic minorities access to the learning of their mother tongue and to instruction in their native language. The Act on the educational system, in its article 1, stipulates that every Polish citizen has the right to education, including children, who have the right to education at school. The details concerning the education of minorities are included in article 13 of this act - "a school or a public educational institution shall enable the pupils to maintain the sense of their national, ethnic, language and religious identity, and in particular their mother tongue, as well as their own history and culture". The regulation of the Minister of National Education of 24 March 1992 on the organization of education to enable maintaining the sense of national, ethnic and language identity of pupils who belong to national minorities introduces more details to the above-mentioned statutory provision.

104. The needs of parents, pupils and the community of a given minority are taken into account in the organization of those schools in which children belonging to national minorities are to receive their education. In Poland there are schools which provide instruction in the languages of minority groups, schools with additional classes of such languages, as well as bilingual schools. Classes where the language of instruction is that of a minority group are organized for a group of 7 pupils and more in a primary school and comprehensive school, and for 14 pupils and more in a secondary school. In schools where the instruction is conducted in the language of a minority - geography and history of the country of origin are taught. The study of all subjects is carried out in the language of the minority, with the exception of the Polish language, Polish literature and the history of Poland. The pupils are obliged to take final examinations in their native tongue, and they have to obtain bilingual school-leaving certificates. In schools with additional classes of the language of a minority, as well as in bilingual schools, there is a possibility of teaching elements of the history and geography of the country of origin. Also, kindergarten provides the possibility for children to have contact with their mother tongue.

105. Since 1999 all public schools for national minorities have been run by the local government organs and have been financed from the funds received as part of the general educational subsidy, planned on a yearly basis in the budget act. In addition, pursuant to part 30 of the budget act - Education and Upbringing, section 79 - some educational tasks related to the education of children and youngsters of national minorities are subsidized or financed by the national education department, such as additional training for teachers, subsidies for the publishing of textbooks, organizing contests and competitions in different school subjects.

106. In Poland minority languages are taught as mother tongue to more than 37,000 people in 532 institutions (schools providing instruction in the mother tongue of a national minority); more precise data have been presented in the table below:

Table 1. Teaching mother tongue to national minorities in 1999-2000

Language	Institutions	Pupils
Belarusian	43	3 611
Hebrew	1	25
Lithuanian	17	749
German	323	28 244
Slovak	15	385
Ukrainian	104	2 645
Kaszubski	19	1 470
Lemkowski	10	80

107. The problem of Romany children requires a separate presentation. The fulfilment of educational rights for this group of pupils requires taking separate measures. Due to the diversification of the community of the Romanies in Poland (several ethnic groups which differ in terms of language and culture, the lack of their own teaching staff), it is difficult to organize teaching in the native language of this minority. The solution to the problem of educating the Romany children has been taken care of by the Ministry of National Education. They learn in the Polish schools with the Polish language, within the framework of the integrational system. Only in some regions so-called ethnic Romany classes are organized at the level of primary education. The main objective for the creation of such classes is to help Romany children in overcoming the adaptational and educational barrier, and to prepare them to continue their education in classes of a higher level within the framework of the integrational system. The biggest problem in the education of the Romany children is their poor knowledge of the Polish language, which is the reason for their numerous school failures. This creates the necessity for teachers of the integrated classes to deal with those pupils in overtime. In order to overcome those problems, in 1992, upon the initiative of a group of teachers from the former Nowy Sącz province, the Ministry of National Education approved the "Primary-level syllabus for the romanies", which covers forms I - III.

W. Religious instruction

108. The Act of 7 September 1991 on the system of education introduced the possibility of organizing religious instruction in public schools. The right to organize confessional religion within the framework of the educational system has also been included in the laws adopted by the *Sejm* dealing with the relationship between the State and individual churches and religious associations.

109. In the Polish public kindergartens, as well as in primary and comprehensive public schools, religious instruction is organized at the request of parents (legal guardians), and in schools of post-primary level - upon the request of parents or pupils (upon their coming of age, such wish may be expressed by pupils themselves). Such principle introduces the possibility of organizing religious instruction of different denominations in public schools, provided that a church or a religious association which represents a given denomination has legal personality in the Republic of Poland. In the school year 1998-1999 the teaching of religion within the educational system was conducted by 15 churches.

110. According to the *Statistical Yearbook* of the Central Statistical Office (GUS) of 1998, the Roman Catholic Church has the greatest number of faithful - 34,841,893 members. Therefore, the pupils of the Roman Catholic denomination constitute the greatest number of all pupils attending religion classes.

111. The syllabuses for teaching religion as well as textbooks and educational aids are drawn up by individual churches and religious associations. They are also responsible for professional training of the religion teachers.

112. The school organizes lessons on ethics at the request of parents or pupils for those pupils who do not attend religion lessons.

113. Neither religion nor ethics is an obligatory subject for the pupil, and the marks obtained in it do not affect pupil's promotion to the next form. Participation or non-participation in the religion/ethics lessons may not be a reason for discrimination in any form.

X. Culture

114. The issues related to culture have been discussed in the remarks on article 5 (right to equal participation in cultural activity) as well as in the remarks on article 2 (integration movements and organizations of national minorities).

Y. Information

115. The media play a very important role in disseminating information aimed at combating racial prejudice which leads to racial discrimination. In accordance with the Act of 29 December 1992 on radio and television broadcasting, the programmes of public radio and television should take into account the needs of national and ethnic minorities. Public television regularly broadcasts series devoted to national minorities, and these are: *U siebie* ("*At home*") and "*Małe ojczyzny*" ("*Little Homelands*"). In 1999 about 25 programmes were broadcast which dealt with the national minorities, and these included holiday programmes connected with the celebrations of Christmas Eve and Christmas by individual national minorities, or broadcasts of folklore festivals organized by minority groups.

116. Individual national minorities are guaranteed access to radio and television, especially at the local level. Local television and radio stations create and broadcast programmes addressed to national minorities and ethnic groups living in Poland. Those programmes are broadcast on a permanent and systematic basis at fixed times both in their native languages and in the Polish language. In 1999 the regional public radio stations allocated for broadcasts of programmes addressed to the national and ethnic minorities - about 750 hours of the yearly broadcasting time - and public television about 147 hours. These were both information programmes as well as programmes on the culture and traditions of individual national minorities.

117. Below is a table which shows broadcasts of programmes in the mother tongue of national minorities by the public radio and television stations (data as of December 1998):

Table 2. Minority-language broadcasts

No	Station	Language	Broadcasting time
1.	Radio Białystok	Belarusian	2 hours weekly
2.	TV Białystok[a]	Belarusian	20 minutes weekly
3.	Radio Białystok	Lithuanian	1 hour weekly
4.	Radio Białystok	Ukrainian	1 hour weekly
5.	Radio Katowice	German	1 hour weekly
6.	TV Katowice	German	every two weeks
7.	Radio Koszalin	Ukrainian	1 hour weekly
8.	Radio Olsztyn	Ukrainian	30 minutes weekly
9.	Radio Opole	German	1 hour weekly[b]
10.	Radio Rzeszów	Ukrainian	30 minutes weekly
11.	Radio Szczecin	Polish/Ukrainian	Once a month
12.	TV Warsaw	Ukrainian	20 minutes monthly
13.	TV Warsaw, Channel II[c]	Ukrainian	10 minutes monthly

[a] Until the TV Station in Białystok began its operation in 1997, programmes in the Belarusian and Lithuanian languages were broadcast by the Warsaw TV station. After the launch of the TV station in Białystok, programmes in the Lithuanian and Ukrainian languages also began to be broadcast (on an irregular basis).

[b] In addition, news in the German language is broadcast two times a day, as well as a daily 5-minute retransmission of the Deutsche Welle news.

[c] Pursuant to the agreement between the Ukrainian Union and the Board of TV - since November 1995, once a month, a 10-minute programme in the Ukrainian language *Telenowyny (Telenews)* has been broadcast in the form of a retransmission on Channel II of the Polish Television by regional TV stations in Gdańsk, Kraków, Lublin, Poznań, Rzeszów, Szczecin, Warsaw and Wrocław. At present this programme is prepared by individual regional TV stations within the shared frequency band.

118. Recently, additional statutory guarantees have been introduced to the legal system, their objective being, among other things - to prevent prejudices and racial discrimination in the radio and television. The amendment to the Act of 31 March 2000 on radio and television broadcasting has introduced a provision which reads as follows:

> "Programmes, advertisements or other broadcasts may not propagate activities which are in conflict with the law, Polish raison d'Etat, or attitudes and opinions contrary to public morals or public interest, and in particular they may not include contents which would discriminate on account of race, gender or nationality" (art. 18, para. 1).